

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) NO.6332/2003 & CW.9118-9373/2005

Date of Decision : August 05, 2005

ALL INDIA PNB RETIRED OFFICERS ASSOCIATION (Regd.) & ANR.

.....Petitioners

Through: Mr. Puneet Aggarwal and Mr. Atul Bandhu,  
Advocates.

Versus

PUNJAB NATIONAL BANK

.....Respondent

Through: Mr. Jagat Arora and Mr. Rajat Arora, Advdicates.

CORAM:

THE HON'BLE MR.JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

S. RAVINDRA BHAT. J(ORAL)

1. The petitioners in these proceedings under Article 226 of, the

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Constitution seek directions to set aside certain provisions contained in the Punjab National Bank (Employees') Pension Regulations, 1995. These provisions relate to payment of simple interest at 6% per annum upon refund of bank's contribution; commutation formula and restoration commuted portion with effect from the date of date of commutation, instead of actual date of retirement, in so far as pertains to employees who retired between 1.1.1986 and 30.10.1993.

2. All the petitioners were officer-employees of the Punjab National Bank, a Banking Company under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter "the Act"). They retired between the period 1986 and 1993. The respondent (hereinafter referred to as "PNB") framed called Regulations formulated in terms of Section 2(19) of the Act. The Regulations entitled certain classes of employees and retired employees to pension. The primary objective apparently was to give effect to a long-standing demand for grant of pension, to bank employees. The petitioners fall in the category of persons covered by Regulation 3(1) namely, officials who retired from the service of PNB between 1.1.1986 and 1.11.1993. The Regulations contemplated exercise of option in writing

within a particular period (120 days from the appointed date) and refund, within 60 days (after expiry of the initial period of 120 days allocated for that purpose), of the entire amount of the bank's contribution to the Provident Fund, including accrued interest together with simple interest @ 6% per annum- from the date of settlement of such dues till the refund of the amounts. This entitled such class of employees (like the petitioners) who had retired during that period, to pension, as per Regulations 34 & 35 read with Appendix-I. The table annexed to Appendix also detailed the rates of dearness allowance.

3. The petitioners opted for pension in terms of the Scheme contained in the Regulations, soon after it was made effective in the year 1995-1996. They refunded the amounts along with interest (i.e. interest accrued on the amounts contributed by the bank and future interest of 6% from the date when the provident fund amounts were settled till the date of option). Thereafter, the PNB granted the pension in terms of the Regulations. The petitioners continued to enjoy that benefit.

4. In these proceedings, initiated in the year 2003, the petitioners project grievances with regard to three issues namely, the formula contained in the

Table to Regulation 41, which spells out the commutation formula applicable to employees retiring after 1.1.1986. It is averred that the formula adopted is arbitrary and unjust; a person retiring later would be in effect getting more commuted amounts than a person who had retired earlier whereas both would be entitled to the same amounts at the time of restoration, of the commuted amounts. In other words, the grievance made out here is of discrimination.

5. The second grievance of the petitioners is that the condition with regard to restoration of commuted portion of pension has been made admissible from the date of commutation of pension and not from the date of retirement, which will act in an onerous and oppressive manner. It has been lastly urged that the requirement of having to repay amounts with accrued interest as also 6% interest from the date of settlement of the provident fund, to the bank, as a condition for grant of pension, dues is not justified.

6. The Respondent- PNB in the counter affidavit has submitted that prior to the formulation of the Scheme under the Regulations, Officer-employees retiring from the PNB and other similar Public Sector Banks

were not entitled to pension. Pension benefits were worked out for the first time, in terms of the Regulations. As a normal rule, pension is admissible to only those who retire as per a particular Scheme brought into force, prospectively. However, as a uniform policy all banks, after negotiations with the concerned Employees Association/ Unions and the Indian Banks' Association, decided to extend pension to a limited class or section of ex-employees, viz. post 1.1.1986 retirees. This was in spite of such retirees having enjoyed the benefit of the bank's contribution to their provident funds for nearly a decade. Necessarily for such retirees the pension benefits were worked out on a different basis; in effect it constituted a second retrial benefit.

7. The PNB in its response has averred that all the petitioners willingly accepted the Pension Scheme and refunded the amounts payable in order to entitle themselves to its provisions. Having done so they cannot now turn around and 8 years later, question the basis of the Scheme. The PNB has, therefore, questioned the maintainability of the petition on the ground of delay and laches as well as estoppel on the part of the petitioners.

8. As far as specific challenges to the provisions in the Regulations are

concerned, it is submitted that they cannot be impugned. Being a fresh or a new Scheme the endeavor was to grant benefit to a maximum number of persons. If there were minor defects or deficiencies, the Court would not probe into the matter, particularly if the Scheme by and large, conformed to the Constitution and fulfilled its objectives. Hence, the formula for commutation, the date fixed for restoration i.e. the period to be calculated from the date of retirement etc, are matters of policy, which are an integral part of the provision for pension. The calculation of benefits to various categories under the Regulations have to be viewed from an overall perspective and cannot be seen from the point of view of one sub-category or class. A fund is created for the purposes of generating pension benefits, which in turn is based upon fulfilment of the conditions; that includes repayment of amounts by certain retired persons along with a pre-determined rate of interest. All these cannot be termed as arbitrary.

9. Mr. Puneet Aggarwal, learned counsel for the petitioner submitted that the Regulations, in so far as they sanction differential payments for commuted amounts of pension are discriminatory. All persons retiring between 1.1.1986 and 1.11.1993 form one homogeneous group or class. As

per the Scheme each one of them is entitled to the same value at the time of restoration of full pension. However, there is no *rationale* for discriminating between members of that group solely on the basis of dates of their retirement. This has led to a situation where persons retiring earlier are given lesser amounts whereas persons retiring later enjoy the benefit of higher amounts. Learned counsel relied upon the decision of the Supreme Court in *D.S. Nakara Vs. Union of India; AIR 1983 SC 50*.

10. Learned counsel for the petitioner also submitted that the entitlement to restoration of full pension, should to be reckoned from the date of retirement and not from the date of commutation, which took place some time in 1996-97. He relied upon the judgment of the Supreme Court reported as *Common Cause Vs. Union of India; 1987 SC 210* for the purpose. It was submitted that once the entitlement of the petitioner to restoration of the full amount is recognized as a part of his benefits, there is no reason to shift the date as has been done in the Scheme, in the present case.

11. It was lastly contended that the Regulations are void to the extent that they compel the pensioners to pay 6% interest on the bank's contribution in

the provident fund of the employee opting for pension. It is submitted that when the amounts were given, they were a part of the service benefits and terms and conditions of employment. Hence, the petitioners and other pensioners, seeking benefit of a subsequent scheme, cannot be made to suffer due to the non-existence of that policy when they superannuated from the services. The condition requiring deposit of 6% pension on the amounts secured by them at the time of retirement as also requiring them to return accrued interest till the date of their retirement is arbitrary and violates Article 14 of the Constitution of India.

12. Mr. Jagat Arora, learned counsel for the respondent submitted that the petitioners voluntarily opted for the pension under the Regulations; no one compelled them to do so. When they retired from services, their terminal or retirement benefits included the contribution by the bank to their provident fund and accrued interest thereon. At that point of time those amounts were deemed substantial. However, when the pension schemes were formulated they were meant primarily for persons who retired around the times of formulation of such schemes, namely 1993-1995. Nevertheless as a goodwill gesture, as in the case of other public sector banks and as a

uniform policy, PNB extended benefits to all those who had retired between 1.1.1986 and 1.11.1993; i.e. those who had already availed of their terminal benefits and enjoyed them for a considerable period of time. In one sense the Scheme was completely fresh one as far as they were concerned; it granted additional benefits. Such being the case, and having regard to the voluntary nature of the pension benefits, which the petitioners willingly sought for, they cannot complain of violation of Article 14 of the Constitution. Learned counsel also submitted that no Scheme can possibly satisfy all persons it seeks to cover. In that sense no policy would be perfect. However, the efficacy or reasonableness of the policy has to be judged from an overall perspective and not from the point of view of a few individuals who may want better benefits. He cited the judgment of the Supreme Court, reported as *V.T. Khanzode Vs. Union of India*; AIR 1982 SC 917. In that decision the Supreme Court had held that no Scheme governing service matters can be fool proof and some section or the other, of employees, is bound to feel aggrieved over the score of its expectations being falsified or unfulfilled. Such an eventuality alone, however, would not render the scheme arbitrary or perverse.

13. Learned counsel for the respondent lastly submitted that the petitions are highly belated. The petitioners opted some time in the year 1995-1996; they enjoyed the benefits of pension and commuted values, all these years and have now sought to ventilate grievances. It was submitted that in such cases apart from the question of estoppel- which would bar the petition, the grievances raised are also highly belated and stale and the Court should not exercise jurisdiction under Article 226 of the Constitution and adjudicate upon the merits of the Scheme.

14. The Scheme under the Regulations was formulated in the year 1995. However, it was made effective from 1993. It was apparently in furtherance of protracted deliberations, pursuant to demands by employees for the introduction of some form of pension in Public Sector banks. A Memorandum of settlement as well as agreements/ MOU's with workmen/ officers of the bank, respectively were entered into between individual banks, as well as the Indian Banks Association (IBA) along-with representations of such employees/ officers. These settlements etc. were finalized in 1993. The agreements/ settlements included the extension of pension benefits to employees who were in the service of the banks

concerned between 1.1.1986 and 1.11.1993, provided such persons applied for the benefit as per the format prescribed by the concerned bank and refunded the amounts given to them as the bank's contribution at the time of their retirement. This was also incorporated in the Pension Regulations. The concerned provisions dealing with coverage of the Scheme, under the Regulations, reads as follows :-

"CHAPTER 11

APPLICATION AND ELIGIBILITY

3. *Application*

*These regulations shall apply to employees who, -*

1 a) *were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1<sup>st</sup> day of November, 1993; and*

b) *exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and*

c) *refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or "*

15. The Pension Regulations enabled the constitution of a fund which in turn was to contain monies/amounts from contributions by the Bank. Regulation 7 outlines different types of contributions, and amounts forming the composition of the fund. It provides, by clause (c) as follows :

*“the amount consisting of contributions of the Bank along with interest refunded by the employees who had retired before the notified date but who opt for pension in accordance with the provisions contained in these regulations.”*

16. The entitlement to pension to the category of employees retiring between 1.1.1986 and 31.10.1993, is spelt out by Regulation 34(1) and the amount of pension is as per the provision contained in Regulation 35. The Appendix-I to the Regulations deals with the formula for calculating pension and the table annexed to that deals with rates of Dearness Allowance. Regulation 41 enables commutation of pension; it contains a table, which is to be applied for the purposes of calculating amounts payable to those who opt such commutation. As noticed earlier, prior to the formulation of the regulations there was no pension scheme; the bank

used to contribute amounts to the provident fund admissible to the retiring employees and also grant certain interest on that. These accumulations along with other amounts constituted their terminal benefits. When the regulations were formulated in 1995, a limited class of former employees were extended this benefit. Certain conditions such as refund of the bank's contributions along with a nominal 6% interest, were prescribed as a condition for option. The *rationale* is evident from a reading of the Scheme, particularly Regulation 7 (c), which constitutes the fund and the amounts that form the fund, that are to be the basis for disbursement of the bank's liability under the Pension Scheme. If these are to be seen, the grievance of the petitioners, with regard to refund of amounts and rate of interest, in my considered opinion would be illusory. Apart from the voluntary nature of the scheme, its efficacy depends upon the structure of the fund, when the regulations were designed and brought into force. In other words, the refund of amounts along with interest is an integral part of the fund, that has to be utilized for generating the amounts payable as a pension. Besides, the rate of interest of 6% for the period between the date of final settlement of amounts paid at the time of

retirement and refund, cannot be termed unreasonable. This interest relates to a time when the banks' interest rates on savings deposits used to be in the range of 12 to 15% per annum (i.e. during 1986-1993).

17. The grievance of the petitioners with regard to the formulation of what is perceived as less beneficial or differential commutation formula, to my mind, is not well-founded. There can be no dispute about the fact that any scheme which confers benefits on a class of employees has to be reasonable, and treat all alike evenly, in a non-discriminatory manner. Nevertheless the question here is one of policy. Those who retire earlier had the benefit of use of their moneys and the opportunity to invest it for productive gain for a longer period of time, which presumably they did. However, persons retiring at later dates or later periods of time, however, did not enjoy such a benefit. Hence, from an actuarial perspective, the decision of the bank to frame a graded commutation benefit is not discriminatory or arbitrary. The bank has apparently balanced the comparative benefits and advantages and, while keeping in mind the need to ensure that all are given the same restoration (of full pension) benefit at the same levels. The Chart, to Regulation 41 also does not disclose so

great a disparity as to attract the odium of arbitrariness, or be termed irrational or perverse, requiring judicial review, on the basis of Article 14.

18. The question as to whether pension has to be granted from the date of retirement or from the date of commutation, is not based upon any universal rule. In the present case as explained earlier, no pension scheme existed at the time of retirement of these employees. Under normal circumstances they would not have secured the benefit of a pension scheme formulated later. Indeed such is the position as far as pre-1.1.1986 retirees are concerned. Hence, the deviation (if it could be so termed ) from a rule requiring calculation of the commutation period from the date of retirement, is not arbitrary. In fact, in this respect the Supreme Court had in the judgment reported as *R. Gandhi Vs. Union of India* (1999) 8 SCC 106 clarified that it's decision in *Common Cause Vs. Union of India*; 1987 (1) SCC 142 had required the period of 15 years to be understood as applicable, from the date of commutation. This is apparent from reading of Para 13 of the said judgment in *R. Gandhi (supra)* where it was clearly mentioned that the reference to the date of retirement, has to be construed fairly so as to mean *from the date of*

*commutation* as any other interpretation would lead to an unfair or undue advantage to pensioners. Hence, the submission of the petitioners the restoration of full pension has to be after 15 years from the date of retirement, is without any basis.

19. In the present case, the petitioners of their own accord and presumably after considering all the pros and cons, opted for the Scheme, which also meant refunding the amounts furnished to them at the time of their retirement along with interest. They also opted for commutation in terms of Rule 41. They were under no compulsion to do so because as per the conditions of service applicable to them at the time of their retirement, they had been paid all terminal benefits and dues. If the benefits under the pension regulations were not suitable or detrimental to their interests, nothing prevented them from declining the offer. Having accepted the offer, opted for pension, complied with the terms of the regulations and even secured advantages for the last 8 years, it is not now open to them to contend that one or the other part of such scheme is arbitrary. The petition is, therefore, hit by estoppel as well as laches.

20. One more, last, reason why this Court ought not to entertain this

petition is that the Scheme in the Regulations being a new one, cannot be characterized as perfect. It seeks to achieve a broad objective of maximum coverage to different categories of employees. In its attempt for equity or benefit for all, the aim of a large scheme such as the pension scheme, would not satisfy the minute requirements of every person it covers. To put it another way, no scheme can be perfect. As long as it achieves its broad objectives and does not willfully exclude persons who would, otherwise, be entitled to its benefits, the Court would not interdict one or other of its terms on the ground of arbitrariness. Supreme Court in its judgment reported as Reserve Bank of India Vs. C.N. Sahasranaman; 1986 supplement SCC 143 held as follows :-

*"In matters of service conditions, it is difficult to evolve an ideal set of norms governing various conditions of service and in a grey area where service rules operated, if more than one view is possible without significance either reason or common sense, the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few.....viewed in that light, it is true, there may be individual circumstances exemplifying injustice by postponing or delaying the chances of promotion of the contesting respondent yet that does not deny them their*

*constitutional rights in its proper measure and the considerations that have weighed with the making of the modified scheme and in the light of the other considerations mentioned hereinbefore, we must ensure that whatever care with objective or foresight any rule is framed, some hardship, inconvenience or injustice might result but the paramount consideration is the reconciliation of the conflicting claims. ...”.*

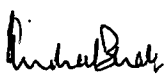
A similar reasoning appears in the judgment of the Supreme Court in *New Bank of India Employees Union Vs. Union of India; 1998 (8) SCC 407*. In this case too, the petitioners have not denied that after having enjoyed benefits of the Bank's contributions for about 8-9 years, they were offered a second retrial benefit by way of pension. They opted for those benefits, for reasons which appealed to them. Now almost a decade later they are seeking to project grievances alleging arbitrariness in the operation of the scheme. As explained in the foregoing paragraphs, both principles of estoppel and laches bar the maintainability of the present petition. Besides, in a new scheme, the imperfections in *minutiae*, cannot be highlighted to characterize the regulations as arbitrary.

21. In view of the foregoing discussion, I am of the considered opinion

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that the petitioners are not entitled to any relief in these proceedings. The writ petitions are accordingly dismissed with no orders as to costs.

August 05, 2005  
mlb

  
(S. RAVINDRA BHAT)  
JUDGE